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March 30, 2011

The Honorable Kathleen Sebelius  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, D.C. 20201

Dear Secretary Sebelius:

I am writing to reiterate my interest in obtaining detailed information from the U.S. Department of Health and Human Services (HHS) and its Center for Consumer Information and Insurance Oversight (CCIIO) regarding the criteria used to grant waivers to the annual limit requirements under the Patient Protection and Affordable Care Act. As you may recall, I requested such information at the March 16, 2011, Senate Finance Committee hearing entitled, "Health Reform: Lessons Learned During the First Year."

According to the HHS website, 1,040 annual limit waivers have been issued representing 2,624,720 enrollees at the time the waiver applications were submitted.<sup>1</sup> As we discussed at the hearing, most of these waivers were awarded to mini-med plans. Twenty-three annual limit waivers were granted to non-Taft Hartley union plans, which provide coverage to 522,289 enrollees.<sup>2</sup> Also, 237 annual limit waivers were granted to multi-employer plans, which provide coverage to 671,105 enrollees.<sup>3</sup> This means that 260 of the 1,040 waivers, or 25%, were granted to union plans. More importantly though, according to the Congressional Research Service, "the two categories representing unions included 1,193,394 of the 2,624,720 enrollees or policyholders, or 45.5% of the total individuals under the waivers."<sup>4</sup>

According to the CCIIO website, these waivers "are only available if the plan certifies that a waiver is necessary to prevent either a large increase in premiums or a significant decrease in access to coverage."<sup>5</sup> I recognize the need for mini-med policies which offer important and affordable health insurance coverage to many Americans. Yet, the very existence of these waivers demonstrates that the health reform law is not living up to its promises.

I question why some applicants may be granted waivers while others may not. It seems to me that larger employers, who typically have legal departments and resources to monitor, track, and respond to regulations, are more likely to be aware of and apply for the waivers than smaller

<sup>1</sup> [http://cciio.cms.gov/resources/files/approved\\_applications\\_for\\_waiver.html](http://cciio.cms.gov/resources/files/approved_applications_for_waiver.html) Accessed on March 16, 2011.

<sup>2</sup> [http://cciio.cms.gov/resources/files/non\\_taft\\_hartley\\_union\\_03042011.pdf](http://cciio.cms.gov/resources/files/non_taft_hartley_union_03042011.pdf) Accessed on March 16, 2011.

<sup>3</sup> [http://cciio.cms.gov/resources/files/multiemployer\\_03042011.pdf](http://cciio.cms.gov/resources/files/multiemployer_03042011.pdf) Accessed on March 16, 2011.

<sup>4</sup> Congressional Research Service Memorandum to Senator John Ensign dated March 24, 2011.

<sup>5</sup> [http://cciio.cms.gov/resources/files/approved\\_applications\\_for\\_waiver.html](http://cciio.cms.gov/resources/files/approved_applications_for_waiver.html) Accessed on March 16, 2011.

companies with limited resources. In addition, I am concerned about the number of unions that have received annual limit waivers.

It is my understanding that applications for waivers from annual limits are reviewed on a case-by-case basis.<sup>6</sup> I recognize that HHS has issued multiple guidance letters to describe the process that a group health plan or health insurance issuer should follow in order to apply for a waiver to the annual limit requirement. The November 5, 2010, guidance letter describes several factors that may be considered when reviewing a waiver application, including the policy's current annual limits; premium changes in percentage terms; premium changes in absolute dollar terms; the number and type of benefits affected by the annual limit; and the number of enrollees in the plan seeking a waiver.<sup>7</sup> Yet, it is unclear how large an increase in premiums or how significant a decrease in access to coverage would need to occur in order to have a waiver granted.

The HHS website lists the names of waiver applicants who have been approved for annual limit waivers. The date the application was received, the plan effective date, the number of enrollees, the application complete date, and the date that the waiver was approved is also available. However, the HHS website does not allow the public to examine applications for the annual limit waiver. The website also does not contain HHS correspondence indicating whether a waiver has been approved or rejected or the rationale for such determination.

In order to obtain more clarity concerning the annual limit waivers, I request the following information:

- (1) The data and documents produced by HHS and its CCIIO relating to the annual limits waiver that were provided to the House Energy and Commerce Committee.<sup>8</sup>
- (2) Information on why HHS decided to publish medical loss ratio waiver applications, supplemental materials, and application determinations on the HHS website but did not post comparable information concerning the annual limit waiver application.
- (3) A copy of each annual limit waiver application requested.
- (4) The determination of the Secretary whether to approve or reject each annual limit waiver application, detailed rationale for such approval or disapproval, and the documents used to come to the decision.
- (5) Information on what constitutes a "significant decrease in access to benefits" that would trigger the approval of an annual limit waiver, including information regarding the type of benefits proposed to be reduced, the extent to which any benefits are proposed to be reduced, and any proposed changes to benefit cost-sharing.

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<sup>6</sup> [http://cciio.cms.gov/resources/files/approved\\_applications\\_for\\_waiver.html](http://cciio.cms.gov/resources/files/approved_applications_for_waiver.html) Accessed on March 16, 2011.

<sup>7</sup> [http://cciio.cms.gov/resources/files/11-05-2010annual\\_limits\\_waiver\\_bulletin.pdf](http://cciio.cms.gov/resources/files/11-05-2010annual_limits_waiver_bulletin.pdf) Accessed on March 16, 2011.

<sup>8</sup> <http://democrats.energycommerce.house.gov/sites/default/files/documents/Supplemental%20Memo.pdf> Accessed on March 16, 2011.



(6) Information on what constitutes a "significant increase in premiums" that would trigger the approval of annual limit waiver. Such information should be provided in percentage terms and absolute dollar terms.

Please provide the documents whenever possible in an electronic format. Additionally, I understand that some documents may contain sensitive confidential or proprietary information. Please provide documents in a minimally redacted format.

Thank you in advance for providing these materials to me. I look forward to receiving the requested documents and supplemental information by April 13, 2011.

Sincerely,

  
JOHN ENSIGN  
United States Senator

cc: Mr. Steven Larsen